IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

RITAM INTERNATIONAL, LTD., *

*

Plaintiff, * NO. 4-00-CV-10057

*

v. *

*

PATTISHALL, MCAULIFFE, NEWBURY, * MEMORANDUM OPINION

AND

HILLIARD & GERALDSON, * RULING GRANTING

MOTION

FOR SUMMARY

JUDGMENT

Defendant. *

Plaintiff filed a complaint in the Iowa District Court for Jefferson County alleging defendant committed legal malpractice. Defendant removed the case to this court, pursuant to 28 U.S.C. § 1441(a), based on diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Defendant moves to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), on two grounds: lack of proximate cause and the running of the statute of limitations. Because the parties have presented and relied on matters outside the pleadings in arguing this motion, this court will treat the motion as one for summary judgement as provided for in Rule 56. Fed. R. Civ. P. 12. Both parties have been given a reasonable opportunity to present all material made relevant by Rule 56. Id.

I. FACTS

For purposes of this motion, the following facts are taken from the complaint and from plaintiff's resistance brief, and they are viewed in a light most favorable to plaintiff. Plaintiff is an Iowa corporation engaged in the business of manufacturing and selling toys. In January, 1991, plaintiff and Monarch Licensing, Ltd., a New York corporation, entered into a licensing agreement that gave plaintiff the exclusive license to sell a specific toy. Later, Monarch provided CAP Toys, Inc., an Ohio corporation, with an exclusive license to sell the same toy, which precipitated the underlying lawsuit in this case.

On April 30, 1992, Monarch sued plaintiff in New York federal court to enjoin plaintiff from marketing and selling the toy. Plaintiff retained defendant, an Illinois law firm, to represent it, and defendant later filed an answer and counterclaim on plaintiff's behalf. On August 27, 1992, at the latest, defendant learned of CAP Toys, Inc.'s potential liability involving issues related to the Monarch litigation. Around this time, defendant erroneously advised plaintiff that any potential claims against CAP would be tolled during the pendency of the Monarch litigation. On or about May 19, 1993, Monarch's suit against plaintiff was settled. Plaintiff's

counterclaim against Monarch remained pending, but defendant motioned to withdraw from the case, which was granted on August 20, 1993. In the order granting the motion to withdraw, the court ordered plaintiff to have new counsel appear formally by September 17, 1993. On September 27, 1993, attorney Edward F. Noyes, an Iowa attorney, entered an appearance on behalf of plaintiff to handle plaintiff's counterclaim against Monarch. On October 22, 1993, Noyes filed a motion to dismiss plaintiff's counterclaim without prejudice, which was granted on March 2, 1994. On August 22, 1996, plaintiff contacted counsel with Riccolo & Baker, P.C., a Cedar Rapids, Iowa law firm, and told them that a New York attorney, Bruce Levinson, advised that plaintiff's best potential New York state law claim against CAP, unfair competition, was barred by the statute of limitations. On October 22, 1996, Levinson told plaintiff that any other New York state claims against CAP were also barred by the statute of limitations and that only two weak claims against Monarch possibly existed.

II. LEGAL MALPRACTICE CLAIM

A. PROXIMATE CAUSE

1. Erroneous Legal Advice

Plaintiff argues that defendant was negligent in five

different ways during its representation of plaintiff: (1) in abandoning plaintiff; (2) in erroneously advising, or failing to advise plaintiff about applicable statutes of limitations and their operation and effect; (3) in failing to obtain alternate counsel for plaintiff; (4) in failing to advise plaintiff in such a manner as to protect plaintiff's claims against CAP; and (5) in failing to act as a reasonable, competent law firm under the circumstances then and there existing. The parties' briefs narrow the five categories to two: (1) erroneously advising plaintiff about the applicable statute of limitations regarding potential claims against CAP; and (2) abandoning plaintiff during the Monarch litigation.

To succeed on an Iowa legal malpractice claim, plaintiff must show the following:

- (1) The existence of an attorney-client relationship giving rise to a duty;
- (2) That the attorney, either by an act or a failure to act, violated or breached that duty;
- (3) That the attorney's breach of duty proximately caused the injury to the client; and
- (4) That the client sustained actual injury, loss, or damage.

Dessel v. Dessel, 431 N.W.2d 359, 361 (Iowa 1988)(citing Burke
v. Roberson, 417 N.W.2d 209, 211 (Iowa 1987)). To establish
proximate cause, two facts must exist: "(1) the harm would not
have occurred had the actor not been negligent, and (2) the
negligence was a substantial factor in bringing about the

plaintiff's harm." <u>Id.</u> at 361-62 (citing <u>Pedersen v. Kuhr</u>, 201 N.W.2d 711, 713 (Iowa 1972)). A "substantial" factor is

used to denote the fact that the defendant's conduct has such an effect in producing the harm as to lead reasonable men to regard it as a cause, using that word in the popular sense, in which there always lurks the idea of responsibility, rather than in the so-called "philosophic sense," which includes every one of the great number of events without which any happening would not have occurred.

Pedersen, 201 N.W.2d at 713 (quoting Restatement (Second) of
Torts § 431 cmt. (a)).

Plaintiff fails to meet the second requirement of proximate cause. Plaintiff's erroneous advice regarding the statute of limitations certainly was a factor in bringing about any harm to plaintiff, but it does not qualify as a substantial factor. In <u>Ruden v. Jenk</u>, 543 N.W.2d 605, 612 (Iowa 1996), the Iowa Supreme Court held that

[the attorney's] alleged negligence in failing to advise his clients of the potential [malpractice] claim in the [] estate is not a proximate cause of damage if a successor attorney is employed and he advises them of the potential malpractice claim at a time when such claim is not barred by the statutory limitation on reopening of the estate.

(citing <u>Steketee v. Lintz, Williams & Rothberg</u>, 694 P.2d 1153, 1159 (Cal. 1985)). Here, there is no evidence that a successor attorney correctly advised plaintiff about the statute of limitations issue at a time when plaintiff could have brought a timely claim against CAP. The <u>Ruden</u> court language, however,

is specifically tailored to the facts of that case, and this court is persuaded that the Iowa Supreme Court did not intend to limit its holding to those facts.

The Ruden court approvingly cited Steketee v. Lintz, Williams & Rothberg, whose language fits the facts of this case. In Steketee, the California Supreme Court rejected a legal malpractice claim alleging a failure to file suit within the applicable statutory period because "[a]n attorney cannot be held liable for failing to file an action prior to the expiration of the statute of limitations if he ceased to represent the client and was replaced by other counsel before the statute ran on the client's action." Steketee, 694 P.2d at 1159. See Wall Street Assocs. v. Brodsky, 257 A.D.2d 526, 527 (N.Y. App. Div. 1999)("[I]n order to establish the proximate cause and actual damages elements, plaintiff must show that the Statute of Limitations on the underlying claim had run by the time that it discharged defendants as its attorneys."); C&F Pollution Control, Inc. v. Fidelity & Casualty Co. of New York, 222 A.D.2d 828, 830 (N.Y. App. Div. 1995)(denying legal malpractice claim because "plaintiff's second attorney could have timely commenced a lawsuit...").

Plaintiff's argument of detrimental reliance on defendant's erroneous advice is outweighed by the fact that

plaintiff hired attorney Noyes with approximately one year remaining in which to file a timely New York claim against CAP. Even accepting plaintiff's argument that Noyes's representation was limited to a narrow purpose unrelated to any potential suit against CAP, the fact remains that plaintiff had approximately one year from defendant's withdrawal to hire an attorney and file a timely claim against CAP. These facts evidence plaintiff's lack of due diligence. This court cannot conclude that defendant's erroneous legal advice was a substantial factor in bringing about harm to plaintiff.

2. Abandonment

Plaintiff contends that defendant was negligent in abandoning plaintiff during the Monarch litigation. This court presumes that plaintiff is arguing that the timing of the abandonment was a proximate cause in the running of the statute of limitations regarding potential claims against CAP. For the reasons given in the prior section of this opinion, this argument is without merit. See Ruden, 543 N.W.2d at 612 (concluding that five or six months was "sufficient time to engage a new attorney to reopen the estate for the purpose of filing a malpractice claim.").

B. Statute of Limitations

The parties agree that Iowa Code § 614.1(4)'s five-year statute of limitations governs the legal malpractice claim here. See Millwright v. Romer, 322 N.W.2d 30, 31 (Iowa 1982). The parties also agree that the applicable New York statute of limitations regarding potential claims against CAP was three years from the date of accrual, and that New York's discovery rule extends the statute to the longer of its actual time period or two years from the point of discovery. Plaintiff argues that a reasonable date of CAP's initial wrongdoing was August 22, 1991, but that defendant, while representing plaintiff, did not discover any wrongdoing until August 27, 1992. Assuming New York's discovery rule applies, the latest date the statute of limitations ran was August 27, 1994. Using that date as the accrual date, the complaint in this case, filed on November 1, 1999, was untimely as the five-year statute of limitations would have expired over two months earlier on August 27, 1999.

To avoid this result, plaintiff argues that the Iowa discovery rule should apply. It contends that the date it discovered the New York statute of limitations had run, August 1996, should be the accrual date, and that therefore, the complaint was timely.

Plaintiff's mistake lies in its implicit and mistaken

argument that the discovery rule generally applies to matters of law. In Millwright, the Iowa Supreme Court stated, "Every citizen is assumed to know the law and is charged with knowledge of the provisions of statutes." 322 N.W. 2d at 33. In holding that the applicable statute of limitations began to run on the date of the testator's death, the court stated that "plaintiffs should have known the contents of the will, that the will was drafted by defendant in violation of the statutory rule against perpetuities and that certain bequests were therefore void." Id. at 34; see also Neylan v. Moser, 400 N.W.2d 538, 542 (Iowa 1987)(adopting the date when the time to appeal to the state supreme court has expired as the accrual date for a legal malpractice claim because it is "'the last possible date when the attorney's negligence becomes irreversible'")(quoting R. Mallen & V. Levit, Legal Malpractice § 390, at 457 (1981)). Plaintiff, therefore, is presumed to know that the statute of limitations ran on August 27, 1994. Unless the discovery rule applies to the facts of this case, the five-year statute of limitations began to run on August 27, 1994, the date when plaintiff's New York unfair competition claim expired.1

¹Defendant argues in its reply brief that plaintiff had the ability to pursue other claims against CAP, some of them in other states. Plaintiff addresses the argument in its

The facts of this case do not warrant application of the discovery rule. Defendant ceased representation of plaintiff approximately one year before the statute of limitations on the potential claims against CAP ran, and plaintiff obtained new counsel soon after plaintiff's and defendant's attorney-client relationship ended. The reason these two facts weigh against application of the discovery rule is explained in Millwright.

In <u>Millwright</u>, the court identified three reasons supporting the application of the discovery rule in a legal malpractice action. First, "a client has a right to rely upon the superior skill and knowledge of his attorney." <u>Millwright</u>, 322 N.W.2d at 34. Second, "the absence of such a rule denigrates the duty of the attorney to make full disclosure to the client." <u>Id.</u> Third, often a client does not have the ability or opportunity to detect his attorney's mistake. <u>Id.</u>

response to the reply. This court will not address the impact these potential other claims may have on defendant's statute of limitations defense for three reasons: (1) defendant raised the argument in the proximate cause context, not the statute of limitations context; (2) plaintiff relies exclusively on the New York claim as the basis for its legal malpractice cause of action based on the giving of erroneous legal advice; and (3) the argument was not raised in defendant's motion to dismiss or in plaintiff's resistance, and Local Rule 7.1(f) limits the allowable scope of reply briefs to "assert[ing] newly decided authority or...respond[ing] to new and unanticipated arguments made in the resistance brief."

One of the reasons the court refused to apply the discovery rule to the case before it was that it found the third reason inapplicable. It stressed that "[t]he use of a new attorney for probate was an opportunity for discovery [by plaintiff]."

Cf. Dudden v. Goodman, 543 N.W.2d 624, 628 (Iowa Ct. App. 1995)("[A]s was not the case in Millwright, the executor did not have a separate attorney to detect any mistake made by [attorney] Goodman."). Assuming the first and second reasons given in Millwright support application of the discovery rule in this case, the third reason definitely does not.

Plaintiff hired attorney Noyes approximately one year before the statute of limitations ran on the New York claim. That constituted an opportunity for plaintiff to detect defendant's erroneous advice about the statute of limitations issue. Although attorney Noyes was hired for purposes unrelated to any future CAP litigation, his retention still constituted an opportunity for discovery of defendant's mistake. Furthermore, it is clear that plaintiff had adequate time within which to consult another attorney about a suit against CAP, and to file a timely complaint. This conclusion is supported by the timing of plaintiff's actual retention of attorney Noyes.

Because plaintiff is presumed to have known that its New

York unfair competition claim was statutorily barred on August 27, 1994, and because the Iowa discovery rule does not apply to the legal malpractice claim here, plaintiff's November 1, 1999, filing was beyond the five-year limitations period of Iowa Code

§ 614.1(4). The claim, therefore, is statutorily barred.

III. CONCLUSION AND RULING

Defendant's erroneous legal advice regarding the statute of limitations of potential claims against CAP, and its abandonment of plaintiff were not proximate causes of damages suffered by plaintiff. Furthermore, plaintiff's complaint was filed more than five years after the cause of action accrued and is statutorily barred by Iowa Code § 614.1(4). Therefore, for both reasons, defendant's motion for summary judgment is GRANTED.

Ronald E. Longstaff Chief U.S. District Judge

Dated this ____ day of June, 2000.